IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

MFA.No. 602 OF 2003(C)

WCC.349/2000 BEFORE THE COMMISSIONER FOR WORKMEN'S COMPENSATION, THRISSUR
.....

APPELLANT: 2ND OPPOSITE PARTY

THE ORIENTAL INSURANCE COMPANY LIMITED,
PUNE NOW REPRESENTED BY ITS ASSISTANT
MANAGER, REGIONAL OFFICE, METRO PALACE,
KOCHI - 18.

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS: APPLICANT

MADHAVAN, S/O.CHATHU, VALLIYODU HOUSE,
PANAYAMPARA, KOOTTALA P.O., KUNISSERY,
PALAKKAD DISTRICT.
(NO RELIEFS ARE CLAIMED THE IST OPPOSITE PARTY
AND HENCE HE IS NOT MADE A PARTY IN THIS APPEAL)

BY ADV. SRI.P.V.CHANDRA MOHAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 01/03/2007, ALONG WITH M.F.A. 6/2004, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MFA. 602/2003

ORDER ON I.A. NO. 1142/2003 IN M.F.A. 602/2003

//DISMISSED //

1.3.2007. SD/-,
P.R. RAMAN, JUDGE.

SD/-
ANTONY DOMINIC, JUDGE.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN & ANTONY DOMINIC, JJ.

M.F.A. NOS. 602/2003 & 6/2004

DATED THIS, THE 1ST DAY OF MARCH, 2007.

J U D G M E N T

Raman, J.

Both these appeals are filed challenging the order passed by the Commissioner for Workmen's Compensation, Thrissur. While M.F.A. No. 602/2003 is filed by the Insurance Company, the other appeal is filed by the applicant before the Commissioner for Workmen's Compensation.

2. The appellant in M.F.A. No. 6/2004 preferred an application before the Court of the Commissioner for Workmen's Compensation claiming compensation of an amount of Rs. 2,60,202/- for the injuries sustained by him on 17.2.1999 in the course of his employment. He was a driver in lorry bearing Reg. No. KA-01/4006 owned by the first opposite party before the Workmen's Compensation Commissioner. The employer did not contest the matter. The Insurance Company admitted the policy but disputed the alleged disability and also the contract. The applicant sustained (a) Open type II fracture right tibia (upper third) and fibula, (b) Lacerated wound left thigh and (c) Fracture L3 vertebra. The

applicant gave evidence as AW.1 and the doctor who issued the disability certificate Ext.A10 was examined as AW.2. AW.2 also certified the loss of earning capacity of the applicant as 80%.

3. The Insurance Company filed an application for referring the applicant to the Medical Board to assess the loss of earning capacity. But the Commissioner did not allow the same and on the basis of Ext.A10 certificate and the evidence of AW.2, it was found that the loss of earning capacity of the applicant was 70% and accordingly, compensation was computed and directed the Insurance Company to deposit an amount of Rs.1,80,835/- towards compensation payable to the applicant.

4. The applicant, on the other hand, contended that Ext.A10 certificate, along with the evidence of AW.2 would show that the loss of earning capacity is 80% and in the absence of any further evidence contra, the Commissioner for Workmen's Compensation ought to have accepted the same and assess the compensation and the reduction of loss of earning capacity to 70% in such circumstances, is clearly illegal.

5. Since the applicant was relying on the disability certificate Ext.A10 issued by the doctor who was examined as AW.2 and the Insurance Company was disputing the correctness of the said certificate, this Court, by order dated 19.10.2006, directed that the injured be examined by a Medical Board to be constituted by the Superintendent of Medical College Hospital, Thrissur. While referring the matter, it was specifically

directed that after examination, the percentage of loss of earning capacity for the purpose of calculating compensation has to be forwarded to this Court. Pursuant thereto, a Medical Board was constituted and after due examination of the applicant and after verifying the documents, the Medical Board assessed the disability of the applicant. In the certificate thus forwarded by the Superintendent, Medical College Hospital, Thrissur, the permanent disability of the applicant is assessed as 30% and the loss of earning capacity as 70%, as a lorry driver. Both sides submits that based on such certificate, the appeals can be disposed of.

Since the loss of earning capacity as assessed by the Commissioner is 70% and the Medical Board also having assessed the same as 70%, we find that the order passed by the Commissioner for Workmen's Compensation in assessing the loss of earning capacity and awarding compensation does not suffer from any illegality requiring any interference by this Court.

Accordingly, we find no merit in these appeals. Both the appeals are accordingly dismissed. The parities shall bear their respective costs.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-